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July 22, 2021

BY ECF AND BY HAND

Honorable James L. Garrity, Jr.
United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004

Re: In re Orly Genger
Chapter 7 Case No. 19-13895

Dear Judge Garrity:

Dalia Genger has filed an objection (the “Objection”) to the *Chapter 7 Trustee’s Motion For An Order Pursuant To Rule 9019 Of The Federal Rules Of Bankruptcy Procedure (A) Approving Settlement Agreement And (B) Granting Related Relief* (the “Settlement Motion”) which was electronically filed with the court [ECF No. 421]. The Objection includes its own arguments and joins in the objections to the Settlement Motion filed by Sagi Genger and the Orly Genger Trust, all of which objections, including the Objection, total approximately 120 pages. Further, the Objection incorporates by reference Dalia’s amended complaint in her constructive trust action pending before this Court and her objection to the defendants’ motions to dismiss that action, all of which collectively total an additional approximate 80 pages, without exhibits. See “Joinder” of Dalia Genger. [ECF No. 494] (“In establishing the facts in tandem with the legal arguments made herein, Mrs. Genger relies on the statements made in her Amended Complaint Seeking Declaratory Judgement [sic] recognizing a constructive trust and/or equitable lien, found at Adv. Pro. No. 20-01010 (JLG) [Dkt. No. 8]...and in her Opposition to Various Motions to Dismiss [Dkt. No. 39]”).

In connection with the Settlement Motion, the Trustee served Dalia Genger with a notice of deposition scheduled for June 22, 2021. After the hearing on the Settlement Motion was adjourned to August 3, 2021, the Trustee served an amended notice of deposition scheduled for July 22, 2021. The deposition did not take place for the reasons set forth below.

Honorable James L. Garrity, Jr.

July 22, 2021

Page 2 of 3

Without affirmatively seeking leave of the Court, and despite putting her claims and allegations squarely before the Court with respect to the Settlement Motion and arguing that they bar the Court from approving the Settlement Motion, Dalia's counsel, Paul Labov, has refused to produce Dalia for a deposition. In doing so, Mr. Labov, relies on Your Honor's separate prior ruling on June 15, 2021 relating to Sagi's motion to dismiss (as to which Dalia purported not to take a position), and states "In addition to Mrs. Genger's health issues (which you are now well aware of), there is simply no information Mrs. Genger could testify to in respect of your client's decision to enter into the settlement agreement. Given these issues, I am not planning on making Mrs. Genger available for a deposition." See Email at **Exhibit "A"**.

But the Bankruptcy Rules do not allow Mr. Labov to unilaterally decide whether or not to comply with the Trustee's discovery requests. In issuing its prior ruling, the Court noted "I'm denying that request and will adhere to my earlier ruling that Dalia would not be deposed in connection **with this hearing** and not be called as a witness **in this hearing**. **That is as it relates to this hearing and without prejudice as we move forward, if indeed it becomes relevant – that her testimony might be relevant in some other hearings.**" See Transcript (relevant portion of which attached as **Exhibit "B"**), p. **7:13 to 7:19** (emphasis added). As I noted to Mr. Labov by email, the Court's prior ruling related solely to Dalia's testimony pertaining to Sagi's motion to dismiss this case, which she purports not to have joined, not the Settlement Motion, in which she most definitely has joined in other objections and objected on her own behalf. See Email at **Exhibit "C"**. And, notably, the Court squarely acknowledged Dalia's relevancy to this case, noting "Look, Dalia Genger is central to what's gone on in this case, just as Orly and Sagi are." [April 14 Transcript at 14:16-14:17]. A copy of the April 14th Transcript as annexed here as **Exhibit "D"**.

Moreover, Mr. Labov has previously acknowledged that Dalia's deposition would be warranted with respect to her constructive trust action. In an email dated June 10, 2020, Mr. Labov stated "... we request that [Dalia's] deposition be delayed until such time as her motion for constructive trust is scheduled. At that time, appropriate health precautions will be taken in light of the information then available." [June 10, 2020 E-mail, attached hereto as **Exhibit "E"**]. As noted above, the Objection expressly incorporates by reference and thus relies upon the claims and allegations that Dalia made in her amended complaint in the constructive trust action. As the Court knows, several parties, including the Trustee, filed motions to dismiss the constructive trust action, and it remains *sub judice* before the Court.

Dalia cannot have it both ways. She cannot seek relief from this Court with respect to the Settlement Motion, join in other parties' filings, make substantial allegations of misconduct against parties and yet evade discovery with respect to her own filings. Further, in light of Dalia's ability to review and approve her own Objection, which includes her own arguments and joins in other arguments of other parties, totaling over 120 pages in total, and her ability to direct counsel to file the Objection, Dalia cannot claim she is not medically fit to attend a virtual deposition. Given the filing and content of her Objection, Dalia's testimony is clearly relevant to the Settlement Motion, and it would severely prejudice the Trustee and the Settling Parties to be

Honorable James L. Garrity, Jr.

July 22, 2021

Page 3 of 3

denied the right to obtain discovery from Dalia with respect to her Objection, claims and allegations pertaining thereto.

In light of the foregoing, the Trustee respectfully requests that the Court either (i) compel Dalia to appear at a video deposition next week in advance of the August 3rd Hearing, or (ii) strike Dalia's opposition to the Settlement Motion and draw a negative inference against Dalia in accordance with Fed.R.Civ.P. 37(b)(2)(B), made applicable here by Bankruptcy Rule 7037.

Respectfully submitted,

/s/Rocco A. Cavaliere

Rocco A. Cavaliere

EXHIBIT A

Sheree Nobles

From: Rocco A. Cavaliere
Sent: Thursday, July 22, 2021 9:05 PM
To: Sheree Nobles
Subject: FW: Genger



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COVID-19 RESOURCE CENTER

-----Original Message-----

From: Paul J. Labov <PLabov@pszjlaw.com>
Sent: Friday, July 16, 2021 11:44 AM
To: Rocco A. Cavaliere <rcavaliere@tarterkrinsky.com>
Subject: [EXT] Genger

Rocco,

I received your email regarding deposing Mrs. Genger in connection with the Trustee's motion. In addition to Mrs. Genger's health issues (which you are now well aware of), there is simply no information Mrs. Genger could testify to in respect of your client's decision to enter into the settlement agreement. Given these issues, I am not planning on making Mrs Genger available for a deposition.

I am out this week but back next week if you'd like to speak further or bring this to the Judges attention. Thanks and enjoy the weekend.

Paul

Sent from my iPhone

EXHIBIT B

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

In the Matter of:

ONLY GENDER,	Main Case No.
Debtor.	19-13895-jlg

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

June 15, 2021
5:11 PM

B E F O R E:
HON. JAMES L. GARRITY, JR.
U.S. BANKRUPTCY JUDGE

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2 Pre-Trial Conference

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20 Transcribed by: Stephanie Petersen

21 eScribers, LLC

22 352 Seventh Avenue, Suite #604

23 New York, NY 10001

24 (973) 406-2250

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ORLY GENDER

7

1 THE COURT: All right. Good afternoon. It's Judge
2 Garrity, and we are together in the case of Orly Genger, case
3 number 19-13895. This is a pre-hearing conference that I had
4 scheduled in order to address a couple of open items -- or
5 items that remained open prior to the hearing that will begin
6 tomorrow on the motion filed by Sagi to dismiss the Chapter 7
7 case. There are three matters that I would like to address.

8 The first is the request that was made a couple of
9 weeks ago by Orly, through her counsel, for leave to conduct an
10 investigation -- not investigation, but an opportunity to do an
11 examination of Dalia and Dalia's fitness to provide testimony.
12 I've considered what -- the requests and the responses in the
13 letters most respectfully. I'm denying that request and will
14 adhere to my earlier ruling that Dalia would not be deposed in
15 connection with this hearing and not be called as a witness in
16 this hearing. That is as it relates to this hearing and
17 without prejudice as we move forward, if indeed it becomes
18 relevant -- that her testimony might be relevant in some other
19 hearings. So that's the first thing.

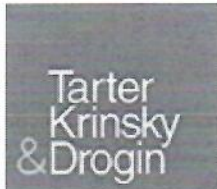
20 The second matter I want to address, Mr. Bowen, did
21 you get a response to your June 13 letter to the Court as it
22 relates to the use of the transcripts? Have you resolved that
23 issue?

24 MR. BOWEN: Your Honor, it's Mike Bowen. We have not
25 resolved the issue. Mr. Dellaportas did send to me, on Sunday

EXHIBIT C

Sheree Nobles

From: Rocco A. Cavaliere
Sent: Thursday, July 22, 2021 9:08 PM
To: Sheree Nobles
Subject: FW: [EXT] Confirmation - In re: Orly Genger - Dalia Genger 105793



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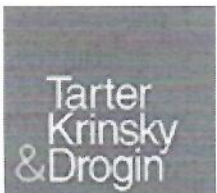
From: Rocco A. Cavaliere <rcavaliere@tarterkrinsky.com>
Sent: Tuesday, July 20, 2021 8:18 PM
To: Paul J. Labov <PLabov@pszjlaw.com>
Subject: RE: [EXT] Confirmation - In re: Orly Genger - Dalia Genger 105793

Paul,

I don't believe Mrs. Genger has any health issues whatsoever at this time. As a party filing a detailed frivolous objection in the case, which includes joining in other scandalous and frivolous objections, Dalia is obviously of sound mind and competence to make decisions at this time. Don't tell me that you prepared this objection yourself, without consultation with your client? Through her objection, she has made clear that she certainly has relevant information and as a result, she is required to testify, absent a court order otherwise. Not sure what you are waiting for, as I noticed Ms. Genger's deposition weeks ago and you still have not sought guidance from the Court on her deposition. This is a problem of your own making. Absent Court intervention, which you may seek at your convenience, the deposition will go forward on Thursday. If you believe you can demonstrate that her deposition should not go forward on Thursday, please bring it to the attention of Judge Garrity tomorrow, as this is not my burden. It is very clear that the Court's prior decision in reliance on old doctor's notes related only to the motion to dismiss, to which Mrs. Genger was not a party. Indeed, Judge Garrity made it abundantly clear that his decision was limited to the motion to dismiss and he was not deciding the need for her deposition on other matters in the case.

In sum, as we sit here today, I have no updated letters on her condition and not even a formal request by you of Judge Garrity to put off her deposition. Indeed, all I have in front of me is an 11 page objection that she directed you to file, after she analyzed and reviewed two other long objections filed to the settlement motion.

Rocco



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From: Paul J. Labov <PLabov@pszjlaw.com>
Sent: Tuesday, July 20, 2021 6:43 PM

To: Rocco A. Cavaliere <rcavaliere@tarterkrinsky.com>

Subject: Re: [EXT] Confirmation - In re: Orly Genger - Dalia Genger 105793

Thank you, Rocco. As I mentioned in my previous email, given Mrs Genger's health issues and the lack of any information in connection with your client's motion, Mrs. Genger will not be testifying absent court order. If you'd like to bring this issue to the court's attention, please let me know when works best for you and I will do my best to accommodate your schedule.

Sent from my iPhone

On Jul 20, 2021, at 5:20 PM, Rocco A. Cavaliere <rcavaliere@tarterkrinsky.com> wrote:

Set forth below and attached is the confirmation/link for Dalia Genger's virtual deposition for this Thursday, July 22, 2021 at 11:30 a.m.

<<http://www.tarterkrinsky.com>>

<image416608.png>

Rocco A. Cavaliere

|

Partner

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From: Trustpoint Scheduling <email@trustpoint.one>
Sent: Tuesday, July 20, 2021 5:13 PM
To: Rocco A. Cavaliere <rcavaliere@tarterkrinsky.com>
Cc: email@trustpoint.one; russell.mangold@trustpoint.one
Subject: [EXT] Confirmation - In re: Orly Genger - Dalia Genger 105793

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

Good Day,

Thank you for scheduling with us. Attached please find the confirmation for the below referenced Videotaped Deposition.

Please let us know if anything below is incorrect and confirm the estimated end time. If you need any of our additional services such as a Videographer, Realtime, Deposition Summarization, etc. - and they are not listed below - please reach out and we would be happy to add to your scheduling.

We will confirm this assignment again the business day prior to the scheduled time.

Thank you,

Initial Confirmation of Services Requested

Job No.

105793

Scheduled Date

7/20/2021

Attention

Rocco A. Cavaliere, Esq.

Attorney/Contact

Rocco A. Cavaliere, Esq.

Firm

Tarter Krinsky & Drogin, LLP 212.216.8000<votel://+12122168000>

This email is being sent as confirmation of the following proceedings:

Case

In re: Orly Genger

Witness(es)

Dalia Genger

Event Date

7/22/2021

Time

11:30AM - 6:30PM(GMT-05:00) Eastern Time (US & Canada)

Location

Zoom Meeting

NY

Phone:

Additional Details/Link: <https://trustpoint-one.zoom.us/j/92925678522?pwd=Z05paStrOFFwWmh3aTFxK1dFbIVCdz09><<https://trustpoint-one.zoom.us/j/92925678522?pwd=Z05paStrOFFwWmh3aTFxK1dFbIVCdz09>>

Meeting ID: 929 2567 8522

Passcode: 713897

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+13017158592<votel://+13017158592>,,92925678522# US (Washington DC)

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Dial by your location

+1 301 715 8592 <votel://+13017158592> US (Washington DC)

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+1 253 215 8782 <votel://+12532158782> US (Tacoma)

+1 346 248 7799 <votel://+13462487799> US (Houston)

+1 669 900 6833 <votel://+16699006833> US (San Jose)

Meeting ID: 929 2567 8522

Find your local number: <https://trustpoint-one.zoom.us/j/anzpj2OQp><<https://trustpoint-one.zoom.us/j/anzpj2OQp>>

Services

Service Item

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Tarter Krinsky & Drogin LLP, Attorneys-at-Law.
<JobConfirmation-105793.pdf>
<105793.ics>

EXHIBIT D

In Re:
ORLY GENDER
Main Case No. 19-13895-jlg

April 14, 2021

eScribers, LLC
(973) 406-2250
operations@escribers.net
****.escribers.net*

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

ONLY GENDER,	Main Case No.
Debtor.	19-13895-jlg

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

April 14, 2021
5:11 PM

B E F O R E:
HON. JAMES L. GARRITY, JR.
U.S. BANKRUPTCY JUDGE

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2 Discovery Conference (Doc # 378, 379, 380, 382, 383, 408)

3 Motion to File Under Seal (Doc #407)

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20 Transcribed by: Tamara Bentzur

21 eScribers, LLC

22 352 Seventh Avenue, Suite #604

23 New York, NY 10001

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1

2 A P P E A R A N C E S (All present by video or telephone):

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4 Attorneys for Orly Genger, Debtor

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9 BY: MICHAEL P. BOWEN, ESQ.

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13 Attorneys for ADBG, LLP

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15 New York, NY 10004

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17 BY: CHRISTOPHER GARTMAN, ESQ.

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20 ERIC HERSCHMANN

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22 210 Lavaca Street

23 Austin, TX 78701

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3 Attorneys for Sagi Genger

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8 BY: THOMAS A. PITTA, ESQ.

9 JOHN DELLAPORTAS, ESQ.

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12 TOGUT, SEGAL & SEGAL LLP

13 Attorneys for Arie Genger

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17 BY: JARED C. BORRIELLO, ESQ.

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20 TARTER KRINSKY & DROGIN LLP

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22 1350 Broadway

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24

25 BY: ROCCO A. CAVALIERE, ESQ.

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BY: PAUL J. LABOV, ESQ.

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Trust

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BY: ADAM POLLOCK, ESQ.

MAX RODRIGUEZ, ESQ.

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KASOWITZ BENSON TOREES LLP

Attorneys for Kasowitz Benson Torres LLP

1633 Broadway

New York, NY 10019

BY: ANDREW R. KURLAND, ESQ.

ONLY GENDER

7

1 P R O C E E D I N G S

2 THE COURT: All right, good afternoon. It's Judge
3 Garrity. We're here on the Orly Genger case number 19-13895.
4 We've got a couple of matters on the calendar this afternoon.
5 The first that I would like to address is the request that is
6 found at document 407, and that is the request for an order
7 authorizing Dalia Genger to seal certain documents pursuant to
8 the confidentiality and protective order.

9 Mr. Labov, you submitted this, and what you're asking
10 is that the only parties who should -- who would be entitled to
11 access to the doctors' reports that are annexed to the
12 submission would be just the trustee and the parties that have
13 requested leave to depose Dalia Genger; is that right?

14 MR. LABOV: That's -- good evening, Your Honor. Paul
15 Labov, Pachulski Stang Ziehl & Jones on behalf of Dalia Genger.
16 That is correct. If I could just update one thing. Those
17 parties, Mr. Cavaliere, Mr. Bowen -- those parties -- although
18 it wasn't Mr. Bowen, but he represents the debtor, they served
19 third-party subpoenas on Ms. Genger.

20 And Mr. Kurland, although he did not serve a subpoena,
21 he did notice her deposition. And what I understood from Your
22 Honor's discussion last week was that in order to fill out the
23 record -- to ensure a complete record, those parties -- the
24 parties that created the record should see them.

25 Just an update to Your Honor. Mr. Cavaliere, Mr.

1 Kurland, and Mr. Bowen all agreed pending this Court's decision
2 that they would keep the records confidential and not share
3 them with any party or other counsel in the case. They did get
4 a copy of those letters this past Monday.

5 THE COURT: Okay, thank you.

6 MR. LABOV: Yeah.

7 THE COURT: I'm sorry. I didn't mean to cut you off.

8 Was there something else you wanted to say, Mr. Labov?

9 MR. LABOV: No, sir.

10 THE COURT: All right. Thank you.

11 Mr. Cavaliere.

12 MR. CAVALIERE: Good evening, Your Honor.

13 THE COURT: Okay.

14 MR. CAVALIERE: Your Honor, I can confirm --

15 THE COURT: Well, let me --

16 MR. CAVALIERE: Yes --

17 THE COURT: Yes, go ahead, please.

18 MR. CAVALIERE: I did receive the letter. I discussed
19 with or communicated with Mr. Labov last Friday regarding his
20 intention to file the motion to seal. I expressed my view to
21 him that I thought that the Court's view was that all the
22 parties subject to the confidentiality order should receive a
23 copy, and then if he thought that he should limit it only to
24 myself and Mr. Kurland and Mr. Bowen, he'd have to make a
25 presentation subject to paragraph 11(b) of the confidentiality

ORLY GENDER

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1 order and demonstrate to the Court that that was appropriate.

2 With that said, I said I wasn't going to be taking a
3 position arguing vociferously because I indicated to him that I
4 think the other parties, to the extent they're interested in
5 seeing those letters, are certainly capable of doing so on
6 their own. So that's all I really have to say, other than to
7 the extent Your Honor has any questions about the motion to
8 seal. Otherwise, I'm happy to answer if I can.

9 THE COURT: All right, thank you.

10 All right, Mr. Gartman, just one moment. I see your
11 hand is up, but just one moment. Okay?

12 Mr. Kurland, do you wish to be heard?

13 MR. KURLAND: Your Honor, thank you. Andrew Kurland
14 for Kasowitz Benson Torres. Just to echo Mr. Cavaliere's
15 comments, we did receive the few letters. I personally
16 received them by email. I kept them under my eyes only,
17 haven't shared them with anyone else. However, as I told Mr.
18 Labov via email, that's subject to this Court's ruling,
19 obviously. And we think every party to the case is entitled to
20 see them as a standard confidential-type document pursuant to
21 the confidentiality order that's already in the case.

22 THE COURT: All right, thank you.

23 Mr. Bowen, do you wish to be heard?

24 MR. BOWEN: Just briefly, Your Honor. This is Mike
25 Bowen. Our position is that this was already addressed at the

1 past -- the last hearing before Your Honor. And the Court
2 instructed Mr. Labov to file those letters -- those letters,
3 three letters, and then to provide them under the provisions of
4 the confidentiality order on an attorney's-eyes-only basis, to
5 everyone, because we're all in this proceeding.

6 So I thought that the effort to add conditions by Mr.
7 Labov was inappropriate and improper, and that's our current
8 position. We accepted the letter under -- or the three
9 letters, I should say, under reservation of rights, so I have
10 reviewed them. And I only feel more strongly that everybody
11 should see these letters, and that they're directly relevant to
12 things that need to be addressed on the motion to dismiss.

13 THE COURT: All right, thank you.

14 Mr. Gartman, sorry to keep you waiting.

15 MR. GARTMAN: No problem at all, Your Honor. Chris
16 Gartman from Hughes Hubbard on behalf of ADBG, LLC. Your
17 Honor, we are one of the parties that has not been provided
18 access to these doctors' notes. We expressed our objection to
19 Mr. Labov on Friday, and we let him know that for the same
20 reasons that Mr. Bowen states, we believe that Your Honor made
21 clear on Friday that -- and I'm quoting from you directly, I
22 could use them, and the other parties could use them subject to
23 the limitations.

24 We don't think there's any restriction placed on who
25 could receive them, and we believe that all parties of record

1 should have access to the letters. We've proceeded in this
2 case where there have been a few parties who have served these
3 subpoenas or deposition notices. But all parties have had the
4 opportunity to attend a deposition, and to the extent they have
5 questions, to question the witnesses at that deposition, as
6 well as to receive the document productions, whether they
7 served a subpoena or not.

8 And I don't think that my client or anybody else
9 should have to serve a fourth or fifth or sixth subpoena, when
10 there's already three that are out there, and we have all these
11 other parties in the case. And so it also just creates
12 difficulties in terms of a hearing like this where an issue
13 would be addressed in terms of gating item like whether she
14 could be deposed in the first place. And because if you're
15 talking about the content of those letters, what are we doing
16 to do? Are we going to knock some people off the call for a
17 short period of time, which doesn't make any sense,
18 particularly where I think all parties have been taking
19 positions as to the relevance of Dalia Genger's deposition. We
20 certainly feel that she's probably the most critical witness in
21 this case. And so we -- we feel that if this is something
22 that's being proposed as a reason why that access to that
23 discovery should be restricted, that all parties should have
24 equal access to it, and obviously, there are appropriate
25 protections under the confidentiality order that deal with this

1 as I believe Your Honor recognized at the last hearing. So
2 that's all I have, unless you have any questions.

3 THE COURT: No, I do not. Thank you very much.

4 Mr. Herschmann.

5 MR. HERSCHMANN: Thank you, Your Honor. Eric
6 Herschmann. I just echo and agree with Mr. Gartman and prior
7 counsel on this. I've never seen a circumstance in which we
8 would all have to subpoena the same witness once they've
9 already been subpoenaed for a deposition, and we haven't
10 operated that way in this case at all. So I think we're
11 entitled to see the letters. I don't know what's in them, but
12 I know previously the issue dealt with COVID. I presume that
13 issue's been resolved. So I don't know what these are about,
14 but at the very least, I think we're entitled to see them. And
15 at least, I believe they'll be relevant overall under any
16 circumstances. Thank you, Your Honor.

17 THE COURT: All right. Thank you.

18 Mr. Labov.

19 MR. LABOV: Your Honor, can you hear me? My hand is
20 raised, but I don't know if I have to hit something else.

21 THE COURT: No, no, I can hear you. I saw your hand
22 was raised --

23 MR. LABOV: Okay.

24 THE COURT: -- which is why I called on you.

25 MR. LABOV: Yeah, okay, thanks. Yeah, I just wasn't

1 sure if you had to hit another button.

2 THE COURT: Sure, no problem.

3 MR. LABOV: Your Honor, just so we're clear, on Friday
4 I'm pretty sure the Court didn't order anything. The Court
5 asked whether my client would be comfortable sharing the
6 letters. After having a discussion about filling out the
7 record ensuring the full record in this matter, in order to
8 protect this incredibly private health information, we made a
9 compromise and said this is how we'd like to do it. People
10 disagreed. And that's why we filed the motion. I don't
11 think -- I don't think Mr. Bowen's correct that we were ordered
12 to do anything.

13 I find it somewhat curious that Mr. Herschmann is
14 saying that he needs to see the letters. If Your Honor may
15 recall, we, Dalia Genger, isn't allowed to see Mr. Herschmann's
16 prenuptial agreement because he got some sort of extended, very
17 closed-off discovery with respect to that. So now he wants to
18 see private medical information from a nonmovant third party.
19 So I don't understand that position, but I'll take it even a
20 step further.

21 The parties that didn't seek to take her deposition,
22 right, they want to see a third-party nonmovant's private
23 medical information. Makes no sense. To sort of drive this
24 point home, it's not as if the deposition would go forward
25 where my client's medical issues are an issue on Sagi Genger's

ORLY GENDER

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1 motion to dismiss, so it's not as if they could start asking
2 questions about her medical issues.

3 This is Sagi Genger's motion to dismiss because of
4 Orly Genger's bad acts, not a motion about my client's medical
5 issues. So while it's true, if Your Honor were to say she's
6 got to sit for a deposition, then Mr. Gartman and Mr.
7 Herschmann, I suppose they could all ask -- they could all show
8 up and ask questions. That's true, subject to certain
9 provisions. That's true. But it's not as if they need to
10 understand her medical issues when she's a nonmovant to this.

11 We think the record is very full, Your Honor. And
12 with respect to relevancy, we won't get into that, but
13 obviously Your Honor has that in front of him. So this was a
14 request by the Court to fill out the record. I think we've
15 done that.

16 THE COURT: Look, Dalia Genger is central to what's
17 gone on in this case, just as Orly and Sagi are. And yes, if
18 it's a third-party subpoena, and early on I said I would look
19 at -- when this issue first came up, that I would consider the
20 matter in camera. I don't feel comfortable ruling on these
21 matters without all of the parties to the litigation getting
22 access to those letters, subject to the confidentiality
23 agreement that has been that has been entered into among the
24 parties to this litigation. And yes, I asked you whether --

25 MR. LABOV: Judge, and they --

ONLY GENDER

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1 THE COURT: Excuse me. Excuse me.

2 MR. LABOV: Sorry. Sorry.

3 THE COURT: That's all right. That's okay. And I
4 asked you whether Ms. Genger, Dalia Genger was comfortable with
5 that in order to give you the opportunity to do what you've
6 done. To consult with her and to come back, and you've made
7 the motion. And I am most respectfully denying it.

8 And what I am saying is I think that those -- that
9 those reports should be available to the parties to this
10 litigation, again, subject to the confidentiality agreement.
11 Whatever was the determinations were made with respect to Mr.
12 Herschmann's prenuptial agreement, they were made. I didn't
13 make them. And they are what they are. And most respectfully,
14 I don't really see how one has anything to do with the other,
15 so that's what I'm directing you do, and that that should be
16 done.

17 Now, as to the deposition, Mr. Labov, did you
18 understand that?

19 MR. LABOV: I understand, Your Honor. You'd like me
20 to make them available, and I will per Your Honor's direction.

21 THE COURT: Thank you.

22 MR. LABOV: Subject to the confidentiality order.

23 THE COURT: Yes. Yes, of course.

24 Okay, now as to the deposition, and I can make this
25 ruling -- I'm comfortable in making this ruling, not -- knowing

1 that there are folks in here who have not seen the letters.
2 All right? I am not going to direct that Dalia Genger sit for
3 a deposition, and I'm not going to do so because I am concerned
4 that, based upon the reports from her doctor, that it could
5 adversely impact her health and her wellbeing. You'll all see
6 the letters. I'm not going to -- most respectfully, I'm not
7 going to discuss it further. That's my determination as it
8 relates to those -- to that matter. All right?

9 MR. LABOV: Thank you, Your Honor. I will make --
10 this is Paul Labov. I will make the letters available in very
11 short order, this evening for sure. And I suppose it's subject
12 to the confidentiality order, so there's not much more that
13 needs to be said about that -- just very sensitive stuff, as
14 you know.

15 THE COURT: Yes.

16 MR. LABOV: And if it's -- if it's okay, Your Honor, I
17 have a prior appointment. May I be excused, or is there
18 something else relating to Dalia that needs to be discussed?

19 THE COURT: Well, is it -- just one second.

20 Does anyone wish to be heard before Mr. -- I have no
21 problem with you being excused. Let me just see if anyone
22 wants to be heard before Mr. Labov --

23 MR. HERSCHMANN: Your Honor -- it's Eric Herschmann,
24 Your Honor. If I could be heard?

25 THE COURT: Yes. Yeah.

1 MR. HERSCHMANN: All right, so Your Honor, I haven't
2 seen the letters, so I don't know what they say.

3 THE COURT: Okay.

4 MR. HERSCHMANN: But I would at least like to have a
5 chance to review the letters and see if there's something that
6 we could put forth to the Court, at least address it. I mean,
7 it's just impossible for me in a blind, to sit here. I
8 understand Your Honor's ruling, but at the very least, I'd like
9 to see what the letters say. And to have their -- just reserve
10 the right to potentially come back to the Court and raise
11 issues that Your Honor may or may not have considered, because
12 at least some of us are completely in the dark. So I just
13 respectfully ask for that opportunity.

14 THE COURT: All right, sure. But as I told you -- and
15 Mr. Bowen, I see you have your hand up.

16 MR. BOWEN: Yes, Your Honor.

17 THE COURT: Yes, did you want to say something to add
18 to what Mr. Herschmann said or what?

19 MR. BOWEN: Yes, Your Honor. It's Mike Bowen. It's
20 sort of -- I'm not exactly sure what Mr. Herschmann was asking
21 for, but in my view, the content of the letters is relevant to
22 some of the issues that will be addressed at the hearing for
23 the motion to dismiss. And if those are under seal, and Ms.
24 Genger, Dalia Genger is not going to give a deposition or give
25 any testimony at all, I have two questions.

1 One is are we going to have the option to at least see
2 if she's available to testify at the time of the hearing? And
3 then the second question is I would need an opportunity to ask
4 the Court to unseal the letters for purposes of the hearing, or
5 I guess have some kind of mechanism in place to have a closed
6 session where we can refer to the letters as part of the
7 hearing. And I think Mr. Labov should be present when we're
8 discussing that. So whether that's addressed today or some
9 other date, I just wanted to state those two ideas.

10 THE COURT: All right. Well, and that's fine. I
11 don't think there's any reason why we couldn't address those
12 issues, if it becomes relevant, at a later date, as to the
13 content of the letters if they are, in fact -- if it is, in
14 fact, relevant to the matters before the Court in the motion to
15 dismiss or the motion to sell. And I am very confident that
16 we'd be able to work through something. Given the fact that
17 the hearing would be over the phone or via Zoom, we shouldn't
18 have any problem being able to do that.

19 But as to going back and re-examining it, Mr.
20 Herschmann, I don't need that, most respectfully. And I
21 understand you're in the dark, but my determination is final.

22 MR. HERSCHMANN: Your Honor.

23 THE COURT: Yes, Mr. Herschmann.

24 MR. HERSCHMANN: Your Honor, it's Eric Herschmann, and
25 I understand that. I just -- I just respectfully, even though

1 Your Honor's made a determination, but there's nothing in the
2 record from us to even anticipate how this could be addressed.
3 So I understand how Your Honor's made a ruling, but I would
4 like if necessary or I believe it's appropriate to supplement
5 the record, obviously keeping the confidentiality.

6 THE COURT: Sure, that's fine.

7 MR. HERSCHMANN: That's all I ask for.

8 THE COURT: That's fine.

9 MR. HERSCHMANN: Okay, thank you, Your Honor.

10 THE COURT: Thank you.

11 Mr. Cavaliere, something before Mr. Labov exits?

12 MR. CAVALIERE: Yes, Your Honor. I respect the
13 Court's decision, obviously, and I was -- I just raised my hand
14 to ask if it's possible for -- and I'd have to even consult
15 with I think some of the other moving parties, the other
16 parties here, Mr. Bowen and Mr. Kurland and possibly others as
17 to whether this would be an adequate substitute.

18 But in light of Your Honor's decision because of the
19 health concerns that you have for Ms. Genger and not sitting
20 for a deposition, whether in person or by video, as to whether
21 as an alternative, which I don't think is as good as a
22 deposition, but to the extent that we could perhaps, if it's a
23 good idea, to send some written deposition questions or
24 admissions. It'd be something that I'd like to give some more
25 thought to, but as an alternative, which would not impose --

1 hopefully would not impose any burden on Ms. Genger and her
2 health, because she'd be able to provide those answers at her
3 own convenience with the assistance of counsel. Again, not as
4 good as a deposition, but perhaps something -- I just wanted to
5 raise it with the Court if it's something that we could
6 potentially consider doing and serving in a relatively short
7 order upon Mr. Labov, if it's something that collectively we
8 think makes sense to do.

9 THE COURT: That's fine. Why don't you take it up
10 among the counsel, and if you think you want to do something
11 like that, reach out to Mr. Labov and work it out. And if you
12 can't work it out, come back to me.

13 MR. CAVALIERE: Thank you, Your Honor.

14 THE COURT: Mr. Labov, you don't have any problem with
15 that?

16 MR. LABOV: Your Honor, I have no problem with anybody
17 coming back (audio interference), sorry, making the suggestion.
18 But Your Honor obviously read the submissions with respect to
19 relevancy and with respect to the medical issues on what all of
20 this is creating. And so, of course -- of course, if Mr.
21 Cavaliere comes back and we can agree to some reasonable
22 agreement, then I obviously will take that back to the client,
23 of course.

24 THE COURT: Look, I think she has an ability -- not an
25 ability -- that now I've determined, given her medical state,

1 she's not able, I'm not going to ask her or direct that she be
2 deposed.

3 MR. LABOV: Right.

4 THE COURT: But that's not based on relevancy, and I
5 am -- and I understand, based upon what we had talked about as
6 it related to the trust and other matters that Mr. Bowen had
7 articulated at the last hearing or the hearing before, I could
8 see that there might be some relevant information that Ms.
9 Genger might have. I'm not going to subject her to that
10 because of her medical condition. So --

11 MR. LABOV: Understood, yeah. So --

12 THE COURT: Okay.

13 MR. LABOV: -- we'll take -- we'll take anything that
14 Mr. Cavaliere says. I'm happy to create an audience for it.

15 THE COURT: That's fine. Thank you very much.

16 Okay, the other matter that we have on the -- on our
17 calendar is the letter, with respect to the letter that Mr.
18 Dellaportas filed and served, I guess, over ECF. It's document
19 number 408. Mr. Dellaportas, are you there?

20 MR. DELLAPORTAS: Yes, Your Honor.

21 THE COURT: All right, and now, Mr. Herschmann, you've
22 seen the letter?

23 MR. HERSCHMANN: Your Honor, I have seen the letter.
24 And if Your Honor wants -- I'm sorry, it's Eric Herschmann. I
25 could address the letter.

1 THE COURT: Well, I'm going to ask Mr. Dellaportas to
2 address it first, and then ask you to do it. Thank you.

3 MR. HERSCHMANN: Okay, Your Honor. Thank you.

4 THE COURT: Unless you've worked it out.

5 MR. HERSCHMANN: No, Your Honor, we haven't worked --

6 THE COURT: Okay. All right, Mr. Dellaportas.

7 MR. DELLAPORTAS: So Your Honor, what we had initially
8 requested, we subpoenaed or document requested early in the
9 case a copy of the trust agreement. We received it. It had
10 redacted out the name of the trustee. And at the --

11 THE COURT: And Mr. Dellaportas -- Mr. Della -- I'm
12 sorry, Mr. Dellaportas, I apologize for interrupting you. Is
13 that the only information that was blacked out?

14 MR. DELLAPORTAS: There may have been some other
15 information on that -- on that, but there's nothing else I
16 think that was of significance to us. I would have -- I'm
17 sorry, Your Honor. I'd have to go back and check. But
18 definitely, it was -- it was largely unredacted.

19 THE COURT: Okay.

20 MR. DELLAPORTAS: Other than the -- other than the
21 name of the trustee. And so we had asked for an unredacted
22 copy. Our proposed order had it that would tell us who the
23 trustee was when the significant events, the dealings with the
24 estate happened. And we did ask Mr. McManus (ph.), who was put
25 in place by that trustee, and he indicated he knew who the

1 trustee was. And when we gave the name of this person, which I
2 won't mention because it's confidential, he said he had never
3 heard that name before.

4 So now we're told admittedly, it feels about nine
5 months later, that that person is the trustee. And we just
6 would like to know what happens, there's a number of
7 possibilities, but we believe that the most -- the most
8 straightforward way to figure out what's going on is to just
9 have the trust agreement with the -- with the name unredacted,
10 which will tell us who was the trustee as of the time of the
11 events in question. And then obviously, if there's been some
12 change in the trustee, that's something that may be very
13 relevant to us. We just -- we don't know, and I don't want to
14 speculate.

15 THE COURT: All right, Mr. Herschmann.

16 MR. HERSCHMANN: Thank you, Your Honor. Your Honor,
17 I've gone back and looked at several things. Your Honor
18 ordered me to do something, and I did it, no questions asked.
19 On March 5th and on April 2nd, Mr. Dellaportas wanted the
20 identity of the trustee.

21 His representations to you about what Bill McManus
22 testified to are not accurate. Mr. McManus never testified he
23 knew the identity of the trustee. I'm not going to get into
24 how Mr. Dellaportas asked questions, but I made a suggestion to
25 him that whether I was the trustee, or the debtor was or any

1 other creditor. And Mr. Dellaportas's statement was I am not
2 going to play twenty questions with a witness.

3 He asked it. There's only been one trustee. It's
4 never been anyone else. He didn't ask the questions
5 appropriately, and had he done so, he may have gotten answers.

6 But Your Honor, I think what's more troubling to me,
7 and it's just become a pattern, and I'm not certain how to stop
8 it any longer, it's the constant letter writing to the Court.
9 It's quasi representing what's happened or what has not
10 happened on behalf of the trustee. And Your Honor, it's
11 just -- I don't even know any longer where to go with it,
12 because it literally sounds like he's saying I directly
13 violated your order.

14 And last week, Your Honor, when he put in his
15 seventeen-page letter, the very beginning of that letter was an
16 allegation that dealt with me, in which he said Briar &
17 Cummings (ph.), a prior trustee's counsel from Texas, told one
18 of the Texas lawyers in the creditor group that I directly
19 solicited a meeting with the trustee, we met outside the
20 presence of counsel at an art gallery for a few hours to
21 discuss a possible deal, and that the trustee returned from
22 that meeting with a settlement agreement in principle.

23 During a meet and confer, Mr. Dellaportas accused me
24 in front of Mr. Cavaliere, the prior trustee's counsel, and
25 others, of lying to the trustee in doing this. Those exact

1 allegations that were just presented to this Court in writing
2 by Mr. Dellaportas as his basis for an allegation, Mr. Cummings
3 has written, "Each of those claims is untrue, as is any
4 assertion that I made them to anyone."

5 And at a certain point, Your Honor, it has to stop.
6 There is no way in the world that Your Honor directed me to do
7 something, and I didn't comply with that order. I identified
8 for them specifically who the trustee is. It's been the same
9 trustee from the beginning.

10 Mr. Dellaportas' representation to the testimony is
11 not correct. He never asked the questions. He didn't get the
12 enunciation right, he didn't understand what he was doing, and
13 he didn't want to do it. There's only been one trustee. I've
14 identified the person. I gave it to them in writing. I marked
15 it confidential, and enough of the allegations. It really has
16 to stop already. Thank you, Your Honor.

17 THE COURT: All right.

18 Mr. Dellaportas.

19 MR. DELLAPORTAS: So Your Honor, yes, I didn't attach
20 the deposition transcript because this has been marked
21 confidential, and I'm trying to limit sealing. But I not only
22 asked Mr. McManus whether he had heard of this person, I
23 spelled her name out for the witness. And I'm happy to show
24 that transcript, and Your Honor can decide who's being truthful
25 and who's being untruthful to the Court right now about this

1 deposition.

2 MR. HERSCHMANN: I'll read it. Your Honor, I could
3 read the transcript if you want.

4 THE COURT: No. No, no, no, no, I'm sorry. I'm
5 sorry, I apologize. Please. I don't want to have any things
6 read to me about this. This is really -- what I don't
7 understand, Mr. Herschmann, is what the problem is with just
8 producing the document with the name of the trustee unredacted.
9 Why is that a problem?

10 MR. HERSCHMANN: Your Honor, honestly, I don't know
11 why Mr. Dellaportas didn't call me. It wouldn't be a problem,
12 except I'm sitting in Texas in my apartment, and I didn't have
13 the ability of taking the document -- I don't have the document
14 with me at the moment, and unredact it. So I did it in the way
15 that I thought would be the simplest. I never dreamed that Mr.
16 Dellaportas would actually question my representation as an
17 officer of the court at your direction as to who's the trustee.
18 If he wants that, it's fine. It's just at a certain point the
19 constant allegations that everything is a scam, and everything
20 is a lie just has to stop.

21 THE COURT: All right --

22 MR. HERSCHMANN: Because it can't continue on a
23 regular basis. I've never seen anything like it.

24 THE COURT: All right, so --

25 MR. HERSCHMANN: He thinks I made up who the trustee

1 or I changed it, it's crazy.

2 THE COURT: All right, Mr. Herschmann, what I'm going
3 to ask you to do then, most respectfully, is if you can maybe
4 work -- I don't know if you're able to work with somebody else
5 who can get access to the documents in a Word form and unredact
6 it, however you want to do that. Just please provide that to
7 Mr. Dellaportas. It'd be the document that you already
8 produced with one change, and the one change would be to
9 unredact the name of the trustee.

10 MR. HERSCHMANN: Okay, Your Honor.

11 THE COURT: If there are other -- if there are other
12 things that were redacted, we're not talking about any of that.
13 We're only talking about the name of the trustee. All right?

14 Mr. Dellaportas, you understand that?

15 MR. DELLAPORTAS: Yes, that's perfectly acceptable,
16 Your Honor.

17 THE COURT: Fine, then that's what we'll do.

18 So Mr. Herschmann, thank you very much.

19 MR. HERSCHMANN: Thank you, Your Honor.

20 THE COURT: All right, so I think that then covers all
21 of the matters that we had on the calendar for today. We
22 are -- so we're done. Thank you all very much.

23 Oh wait, Mr. Kurland, I'm sorry. I see you have your
24 hand up.

25 MR. KURLAND: Yes, Your Honor. Thank you, just very

1 briefly. Andrew Kurland once again, for the record. Your
2 Honor, last time we were together, we discussed the Rule 9011
3 motion. And I just wanted to clarify something for the record.
4 I didn't have the motion that we had served with respect to the
5 pro bono issues that we had discussed last time in front of me,
6 and I apologize for that.

7 I have had a chance to review that motion from six
8 months or so ago. And it is narrower than I remembered it, and
9 I represented -- Mr. Dellaportas represented it as being quite
10 broad. And that's why he filed a lengthy seventeen-page letter
11 the other day. And fully recognizing your court -- Your Honor,
12 rather, already addressed this issue and determined that you
13 would not be addressing the Rule 9011 motion that we'd like to
14 bring before the motion to dismiss, I just wanted to say that
15 we do intend to serve -- file and serve the same exact one,
16 because it is far narrower than I had remembered, and as Mr.
17 Dellaportas represented it to be. Recognizing, however, that
18 the Court will not have a chance to address it until after the
19 motion to dismiss is handled.

20 THE COURT: All right. Thank you.

21 MR. KURLAND: Thank you very much.

22 THE COURT: Very good. All right, Mr. Cavaliere.

23 MR. CAVALIERE: Your Honor, Rocco Cavaliere for the
24 record. I was just curious, Your Honor, if you had a sense of
25 timing on the decision on the constructive trust action I think

1 you had mentioned last week. You certainly didn't commit to a
2 decision this week, nor do you have to. But I was curious
3 whether there's another date in mind where you think we might
4 see that decision.

5 THE COURT: Mr. Cavaliere, I'm working on it. I hope
6 to get it done shortly. But there are other things going on,
7 and trust me, there's no one who wants to get it done more than
8 I do. None, even understanding how anxious all of you are. No
9 one wants to get it done more than me.

10 MR. CAVALIERE: Understood, Your Honor.

11 THE COURT: So that's fine.

12 Mr. Pitta.

13 MR. PITTA: Yes, Your Honor, just briefly. I believe
14 that the parties have all consulted, and we have dates that are
15 available for us for the hearings on the motion to dismiss and
16 the trustee's financing and sale motion. Would you like us to
17 address that with Ms. Rodriguez and get the order
18 (indiscernible) in?

19 THE COURT: Yes, please. Yeah, that would be fine, if
20 you'd just do that with her, we'll take care of it.

21 MR. PITTA: We will, Your Honor. And to the extent
22 the parties have motions in limine or anything along those
23 lines with respect to that, should we include dates --

24 THE COURT: Yes. Yes.

25 MR. PITTA: -- for filing those in the scheduling

1 order?

2 THE COURT: Please.

3 MR. PITTA: Okay, will do.

4 THE COURT: Yes, thank you very much. Yeah, thank
5 you.

6 MR. PITTA: Thank you, Your Honor.

7 THE COURT: All right, Mr. Cavaliere, you still have
8 your hand up or is --

9 MR. CAVALIERE: Yeah, no, I'm sorry. I meant to take
10 it down. I do -- I do just want to apologize, again, as I
11 said, I'm not trying to put pressure on you for that decision.

12 THE COURT: No, no, Mr. Cavaliere, Mr. Cavaliere,
13 there's no need to apologize.

14 MR. CAVALIERE: Okay, thank you. Thank you.

15 THE COURT: It's not a problem.

16 Thank you all very much. All right.

17 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

18 THE COURT: Is there something else, Mr. Cavaliere?

19 MR. CAVALIERE: No.

20 THE COURT: All right, good. Thanks a lot.

21 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

22 THE COURT: Bye-bye.

23 (Whereupon these proceedings were concluded at 5:45 PM)

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RULINGS:

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Dalia Genger motion to file under seal
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C E R T I F I C A T I O N

I, Tamara Bentzur, certify that the foregoing transcript is a true and accurate record of the proceedings.



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Date: April 21, 2021

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EXHIBIT E

Sheree Nobles

From: plabov@foley.com
Sent: Wednesday, June 10, 2020 6:30 PM
To: Rocco A. Cavaliere; MBowen@kasowitz.com; ygeron@reitlerlaw.com
Cc: DSpelfogel@foley.com
Subject: Dalia Genger Discovery

Rocco, Yann, Michael,

We are in receipt of your various discovery demands on our client, Dalia Genger. In the future, please direct all discovery demands/requests directed at Dalia to Doug Spelfogel and me (with copies on all parties). In respect of the document requests and admissions, we will prepare responses/respond and serve them in a timely manner on those parties requesting same.

In connection with the deposition notices, we first note that you have selected three separate dates and times to take Dalia Genger's deposition. Perhaps you were unaware of each other's requests? More importantly, however, Dalia's deposition in connection with Sagi Genger's Motion to Dismiss and the Trustee's 9019 motion, serves no valid purpose.

In connection with the Trustee's 9019 Motion, and specifically, the claims sale portion, so long as Dalia Genger maintains all of her rights and defenses in connection with any claims that may eventually be brought, we have no objection to that portion of the motion. In connection with the loan portion of the 9019 Motion, Dalia Genger's objections are legal in nature. Moreover, if Dalia files a joinder or adds to Sagi's objection, the facts she'd rely on are already laid bare in court decisions that are in all of your collective possession.

Finally, please be reminded that Dalia Genger is 74 years old and has health issues which inhibited in-person meetings even prior to the pandemic. As such, and as she can provide no testimony relevant to either motion, her deposition appears to be an unwarranted health risk. Accordingly, we request that her deposition be delayed until such time as her motion for constructive trust is scheduled. At that time, appropriate health precautions will be taken in light of the information then available.

Should you have any questions or comments, please do not hesitate to contact either Doug or me. Should we not be able to reach a consensual resolution to the above, we will follow the Scheduling Order and seek Court intervention.

Thank you,
Paul

Paul J. Labov

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